

Founded in 1852
by Sidney Davy Miller

MILLER CANFIELD

MICHAEL W. HARTMANN
TEL (313) 496-7554
FAX (313) 496-8454
E-MAIL hartmann@millercanfield.com

Miller, Canfield, Paddock and Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
TEL (313) 963-6420
FAX (313) 496-7500
www.millercanfield.com

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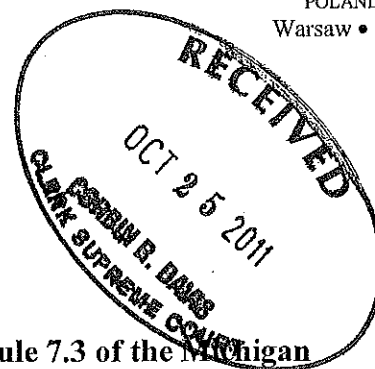
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October 17, 2011

Corbin R. Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909



Re: ADM File No. 2002-24, Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct

Dear Mr. Davis:

I am writing to express the views and concerns of this firm regarding the above proposed amendment to MRPC 7.3, which the Court rescinded and re-published for comment on July 19, 2011.

We conclude, with all due respect, that the amendment is unnecessary and overbroad for all the reasons discussed by the dissenting opinions to the May 19, 2011 Order by Justices Marilyn Kelly, Markman and Hathaway. In addition, the amendment would cause unintended consequences, as it contains ambiguities that would make it difficult to apply, and it would place Michigan lawyers and firms at a disadvantage in competing for business with lawyers from other states. We urge the Court not to adopt the amendment. At the least, the Court should revise the amendment to clarify and narrow its scope.

First, we do not believe the amendment is necessary. Sophisticated clients and potential clients need no protection from communications by lawyers, beyond that provided by the current rule. Moreover, particular problems involving less sophisticated clients can be dealt with on a case-by-case basis under the existing MRPC 7.1, 7.2 and 7.3. We note that the amendment was unanimously opposed by the State Bar of Michigan Committee on Professional Ethics, and was opposed by the State Bar of Michigan Section of Litigation in a very thoughtful letter from the Chair, Thomas Cavalier, Esq., <http://www.michbar.org/litigation/newsletter.cfm> (Winter 2011).

Second, the amendment is ambiguous, and this ambiguity increases its overbreadth. Most troublesome, the term "advertising circulars" in MRPC 7.3(c)(1) is undefined. Lawyers and law firms communicate with the public in writing in many forms, including newsletters, bulletins, re-prints of articles from bar journals and trade publications, and handouts at seminars. The content of these communications is largely or exclusively educational, but they are certainly

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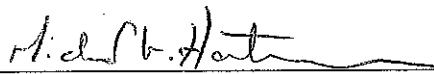
intended to enhance the stature of the lawyer or firm. Are these communications, or any of them, "advertising circulars" that must be labeled as "Advertising Material" under the proposed amendment? We doubt the amendment was intended to reach these educational publications, but as the amendment is currently drafted, it would be risky not to label them. At a minimum, the amendment needs to be revised to include a definition of "advertising circulars" that would clearly define its scope. We note that the ABA Model Rule avoids this problem by regulating only communications that directly "solicit[] professional employment". The meaning of the term "advertising circulars" is but one of several ambiguities that are present in revised MRPC 7.3, and further comment and clarification of those ambiguities would be beneficial to the Michigan Bar before any revised rule is implemented.

Finally, the amendment places Michigan firms at a competitive disadvantage. Increasingly, Michigan lawyers are competing with lawyers from other states to represent out-of-state clients in matters in the state and federal courts in Michigan. We do not believe an in-house attorney or business person will read a letter from a Michigan lawyer labeled "Advertising Material." As a practical matter, the amendment will lead to more out-of-state lawyers appearing in our courts, harming the Michigan Bar and hindering the State's economic recovery.

We appreciate the Court's attention to this matter.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 
Michael W. Hartmann
CEO

MWH/RMW

cc: Hon. Robert P. Young, Jr.
Hon. Michael F. Cavanagh
Hon. Diane M. Hathaway
Hon. Marilyn J. Kelly
Hon. Mary Beth Kelly
Hon. Stephen J. Markman
Hon. Brian K. Zahra